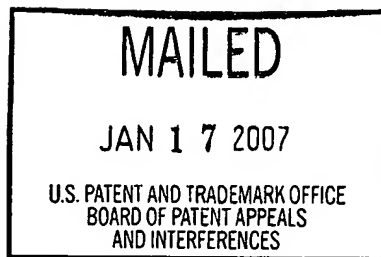


The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHERYL F. COHEN



Appeal No. 2006-1711
Application No. 10/805,935
Technology Center 3700

Decided: January 17, 2007

Before TERRY J. OWENS, JENNIFER D. BAHR, and ANTON W. FETTING,
Administrative Patent Judges.

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 1-24.

We AFFIRM.

BACKGROUND

The appellant's invention relates to a backpack provided with a zipper terminating on the back panel to substantially prohibit or deter theft of contents stored in the backpack. Independent claims 1, 12 and 22 are illustrative of the invention and read as follows:

1. A theft deterrent backpack comprising:
 - at least two panels forming a main compartment,
 - the at least two panels including a back panel and a second panel, other than the back panel; and
 - a releasable securing device for accessing the main compartment, the releasable securing device having a beginning end and a terminating end, the terminating end being disposed on the back panel and the beginning end being disposed on the second panel.
12. A theft deterrent backpack comprising:
 - at least two panels forming a main compartment,
 - one of the panels being a back panel, a second panel being other than the back panel; and
 - a zipper chain for accessing the main compartment, the zipper chain having a beginning end and a terminating end, the zipper chain being disposed so that the terminating end is disposed on the back panel and the beginning end is disposed on the second panel.
22. A theft deterrent backpack comprising:
 - a main compartment formed by a plurality of panels, the plural panels including at least a front panel and a back panel; and

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a releasable securing device for accessing the main compartment, the releasable securing device extending along at least two of the plural panels.

The examiner relies upon the following as evidence of unpatentability:

May	3,530,919	Sep. 29, 1970
Williams	5,154,332	Oct. 13, 1992

The appellant seeks review of the examiner's rejections of claims 1-9, 11-19 and 21-24 under 35 U.S.C. § 102(b) as being anticipated by Williams, claims 1-24 under 35 U.S.C. § 103(a) as being unpatentable over Williams, and claims 10 and 20 as being unpatentable over Williams in view of May.

Rather than reiterate in their entirety the conflicting viewpoints advanced by the examiner and the appellant regarding this appeal, we make reference to the final rejection (mailed May 20, 2005) and examiner's answer (mailed December 21, 2005) for the examiner's complete reasoning in support of the rejections and to the appellant's brief (filed December 6, 2005) and reply brief (filed January 24, 2006) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the following determinations.

Williams discloses an enclosure 16 for a backpack 58, the backpack 58 further including shoulder straps 52 and the enclosure 16 including a front panel 26, back panel 28, and a panel connecting the front and back panels comprising two narrow side panels 34a, 34b, a top panel 32 and a bottom panel 30, each of which is connected along its mutually coincident edge by stitching, energy sealing or the like (col. 3, ll. 15-19). A pair of parallel zippers 14a, 14b extends along back panel 28 and defines between them a flap of material 42 that is secured to enclosure 16 at the intersection of back panel 28 and bottom panel 30. The zippers 14a, 14b are spaced apart at such a distance as to allow the shoulder straps 52 to pass through the enclosure when flap 42 is secured out of the way, as illustrated in Fig. 4 (col. 3, ll. 36-44). A third zipper 14c originates on front panel 26, travels over top panel 32 and terminates between but just above termination point 38 of zippers 14a, 14b on back panel 28 (col. 3, ll. 48-51).

The appellant's argument as to why independent claims 1, 12 and 22 are not anticipated by Williams is that, while enclosure 16 does have a zipper 14c extending along at least two panels, with a beginning end on the front panel 26 and a terminating end on the back panel 28, the enclosure 16 is not part of the backpack (brief, p. 6). We find that the backpack 58, including shoulder straps 52, together with its enclosure 16, can reasonably be considered to be a "backpack" as recited in each of appellant's independent claims. In this regard, we note that appellant's specification does not define the backpack or panels thereof so as to require that the

panels are integral with or connected to any other portion of the backpack, such as the shoulder straps, for example.

In light of the above, we sustain the rejection of independent claims 1, 12 and 22 as being anticipated by Williams. The appellant has not argued separately the patentability of claims 2, 4-8, 13, 15-18, 23 and 24 apart from claims 1, 12 and 22, thereby permitting them to stand or fall with independent claims 1, 12 and 22 (*see In re Young*, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991); *In re Wood*, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978)). The rejection of dependent claims 2, 4-8, 13, 15-18, 23 and 24 as being anticipated by Williams is thus also sustained.

With particular regard to claims 9 and 19, the appellant argues that the zippers of Williams' enclosure 16 are oriented longitudinally, not substantially laterally, as called for in claims 9 and 19, with the backpack held substantially upright (brief, p. 7). We do not agree. As seen in Fig. 4, the zipper 14c extends longitudinally (that is, vertically) along the back panel 28 but is disposed laterally (that is, "of, at, from, or toward the side; sideways" (Webster's New World Dictionary, Second College Edition (Simon & Schuster, Inc. 1984)) along the top panel 32. The rejection of claims 9 and 19 as being anticipated by Williams is sustained.

With respect to claims 3 and 14, which recite that the releasable securing device or zipper chain extends across at least a portion of the side panel, we note that Williams' zipper 14c extends across the top panel 32, which, together with the

two side panels 34a, 34b and bottom panel 30, makes up a “side panel” connecting the front panel 26 with the back panel 28. This interpretation of a “side panel” made up of a plurality of panels stitched or otherwise fastened together is perfectly consistent with appellant’s description of the panels, each of which “need not be an integral piece or unit but instead may be comprised of multiple pieces or units attached (e.g., sewn) together” (present specification, p. 6). We further note, in this regard, that the disposition of Williams’ zipper 14c is much like that of appellant’s zipper 130, which extends across the *top* of the backpack along a “side panel” 120, which comprises material along the bottom, sides and top of appellant’s backpack. The rejection of claims 3 and 14 as being anticipated by Williams is sustained.

With respect to claims 11 and 21, which call for the releasable securing device or zipper chain to extend “sufficiently along the back panel of the backpack so that the terminating end rests against a wearer’s body when worn,” the appellant (brief, pp. 8-9; reply brief, p. 6) argues that Williams’ disclosure of the third zipper 14c as terminating “between but just above termination point 38 of zippers 14a and 14b on back panel 28” (col. 3, ll. 49-51), and thus above the shoulder straps, compels a conclusion that the terminating end is above a point where it rests against a wearer’s body when worn. After examining Williams’ Fig. 4 and Fig. 5, we, like the examiner (answer, p. 5) discern that the slider of zipper 14c is not illustrated in Fig. 5 at the terminating end of the zipper. If it were at the terminating end, it would be much closer to the vertical location at which the shoulder straps 52 pass through the opening formed between zippers 14a, 14b. Further, it is not apparent

why the location of the terminating point of zipper 14c being located just above the termination point of the zippers 14a, 14b would preclude the terminating point of zipper 14c from resting against some portion of the wearer's body when worn. The proximity of the portion of the enclosure 16 above the shoulder straps to the wearer's head, back or neck will depend on factors such as the tautness of the shoulder straps, the posture of the wearer, the size and weight of the wearer, and the volume and weight of the materials within the backpack. Under the appropriate set of conditions, the terminating point of the zipper 14c between and just above the termination point of the zippers 14a, 14b appears reasonably capable of resting against a wearer's body when worn. Accordingly, we sustain the rejection of claims 11 and 21 as being anticipated by Williams.

We turn our attention now to the rejection of claims 1-24 as being unpatentable over Williams. In making this rejection, the examiner takes the position that

it would have been obvious to one skilled in the art at the time of invention to change the length or orientation of the releasable securing devices while remaining within the scope and spirit of the Williams enclosure. As shown by Figure 8 disclosed by Williams, the releasable securing devices can have a length spanning from just a portion of the back panel to a majority of the back panel and it would be obvious to have the length of the releasable securing device extend at least substantially halfway along the back panel [final rejection, p. 3].

We appreciate that Williams' zipper 14c must terminate just above the zippers 14a, 14b, in order to accommodate the flap for passage of the shoulder straps 52 through the enclosure back panel 28, but Williams does not attribute any significance to the portion of the back panel height over which the zippers 14a, 14b extend and thus does not teach away from the modification proposed by the examiner, as urged by the appellant on page 11 of the brief. The relative proportions of the height of the back panel over which each of the zipper 14c and the zipper pair 14a, 14b extends would have been selected by one of ordinary skill in the art on the basis of the desired overall height¹ of the backpack and enclosure and the desired distribution of the backpack and its weight along the height of the wearer and, as such, would have been an obvious design consideration within the skill of the art. The rejection of claims 1-24 as being unpatentable over Williams is thus sustained.

The rejection of claims 10 and 20 as being unpatentable over Williams in view of May is not sustained. The examiner's rejection relies on a determination that the golf bag of May would have provided suggestion to modify the Williams enclosure so that the zipper 14c extends substantially halfway along the back panel, while still beginning on a separate panel and terminating on the back panel (final rejection, p. 4). The structure and manner of use of May's golf bag, which is not designed to accommodate passage of shoulder straps from a backpack therethrough, for example, are so vastly different from those of Williams' backpack enclosure that

¹ Backpacks used by hikers and campers carrying lots of gear, for example, typically are designed to extend well

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one skilled in the art would have found no suggestion in May to modify the zipper arrangement of the Williams enclosure as proposed by the examiner.

CONCLUSION

To summarize, the rejections of claims 1-9, 11-19 and 21-24 as being anticipated by Williams and claims 1-24 as being unpatentable over Williams are sustained and the rejection of claims 10 and 20 as being unpatentable over Williams in view of May is reversed. A rejection of each of the claims on appeal having been sustained, the examiner's decision is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a). *See* 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

Terry J. Owens
TERRY J. OWENS
Administrative Patent Judge

Jennifer D. Bahr
JENNIFER D. BAHR
Administrative Patent Judge

Anton W. Fetting
ANTON W. FETTING
Administrative Patent Judge

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